In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-734

KANSAS CITY AREA TRANSPORTATION AUTHORITY,
Petitioner,

vs.

DIVISION 1287, AMALGAMATED TRANSIT UNION, AFL-CIO,
Respondent.

PETITIONER'S [redacted]

SUPPLEMENTAL SUGGESTIONS SUPPORTING GRANTING OF WRIT OF CERTIORARI

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November 27, 1978

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PETITIONER'S MOTION FOR LEAVE TO FILE SUPPLEMENTAL SUGGESTIONS

Comes now petitioner and moves the Court to grant leave to file supplemental suggestions in support of its petition for writ of certiorari, copy of which supplemental suggestions is attached hereto. In support of the motion petitioner states that its petition was filed November 2, 1978 and that an intervening ruling of the Court of Appeals for the First Circuit, on November 15, 1978, materially affects consideration of Questions 1 and 2 presented by the peti-

tion. As a result of said ruling, petitioner submits that it is appropriate to add the attached brief comments pertaining to the enhanced significance of Question 4 presented by the petition.

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SUPPLEMENTAL SUGGESTIONS SUPPORTING GRANTING OF WRIT OF CERTIORARI

Petitioner Kansas City Area Transportation Authority ("the Authority") hereby advises the Court that the Court of Appeals for the First Circuit has now ruled, contrary to petitioner's contentions, that Federal Question jurisdiction and an implied Federal cause of action do exist, to litigate transit union claims of breach of contract by a public body, where the contract was entered into for the purpose of receiving Federal subsidies, pursuant to Sec. 13(c) of the

Urban Mass Transportation Act. The Court so ruled in an unreported opinion filed November 15, 1978, in *Local Div. No. 714, Amalgamated Transit Union* v. *Greater Portland Transit District*, No. 78-1077.

The 1977 and 1978 views of five District Judges continue to favor petitioner's position, as noted in the petition (page 8). Petitioner recognizes, however, that the Court may wish to consider the impact of the *Portland* ruling on petitioner's Questions 1 and 2.

Questions 1, 2 and 3 continue to present important issues of Federal jurisdictional and substantive law which petitioner believes are worthy of this Court's review, for reasons stated in its petition.

A most compelling point for review at this time, in petitioner's opinion, is Question 4, relating to so-called "spending power preemption". As stated at pages 13-14 of the petition, adoption of a theory that Federal assistance should cause courts to estop local public transit authorities from asserting lack of power to delegate their wage-making functions to a private arbitrator is (1) contrary to Congressional intent, (2) unsupported by statutory language, and (3) directly contrary to the express contract provisions agreed to by the petitioner and other transit authorities, the Union and the Federal funding agency, which expressly subordinate grant contract provisions to controlling principles of local law (and Federal law pertaining to the powers of a body created by bi-state compact, approved by Congress).[1]

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1. The standardized contract language supplied by the International Union provided that "In the event any provision of this agreement is held to be invalid or otherwise unenforceable under the Federal, State or local law, such provision shall be renego-

(*Continued on following page*)

When spending power preemption occurs, it must be candidly viewed as a presumably well-motivated or benevolent form of Federal bribery. The case at bar offers the Court a significant opportunity, critical to the budgetary interests of local transit systems throughout the country, to set much-needed limits and disciplines on a preemption concept which threatens sound Federal-State relationships. Nothing in the present case authorizes "a sweeping step that strikes at the core of state prerogative". *New York State Department of Social Services* v. *Dublino*, 413 U.S. 405, 413 (1973).

Additional reasons and authorities relating to Question 4 are briefed by the American Public Transit Association, at pages 35-40 of its proposed brief of amicus curiae, dated November 9, 1978, heretofore presented to the Court with a motion for leave to file the same.[2]

The ruling below requires the Authority to take illegal action, in excess of its authorized powers. This conclusion is not questioned by either the Union or the Court of Appeals. Estoppel under the preemption doctrine is not justified by the circumstances, here or in related situations

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Footnote continued—

tiated", reserving the right of either party to "invoke the jurisdiction of the Secretary of Labor to determine substitute fair and equitable employee protective arrangements". Apdx. 36, 234 (Record below). The 1969 Federal grant contract contains a similar provision: "Anything in the Grant Contract to the contrary notwithstanding, nothing in the Grant Contract shall require the Public Body to (take any action) in contravention of any applicable State or territorial law. . ." Apdx. 64 (Record below).

2. The unsupported rationale of the Court of Appeals is stated at Appendix page A40, attached to the petition for a writ of certiorari. It is clear that the Court below has failed to perceive the "shift in emphasis" by this Court, against preemption, especially where, as here, the administrative agencies have expressly declined to preempt local law. *Kargman* v. *Sullivan*, 552 F.2d 2, 11, 12 (1st Cir. 1977).

throughout the country. It is respectfully submitted that the decision below should be reviewed and reversed.

Respectfully submitted,

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